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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,484	03/20/2002	Osamu Sakai	43888-132	7151

20277 7590 09/21/2004

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EXAMINER

YUAN, DAH WEI D

ART UNIT PAPER NUMBER

1745

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/088,484	SAKAI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Dah-Wei D Yuan	1745	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 July 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>06302004</u> . | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1745

**POLYMER ELECTROLYTE FUEL CELL AND METHOD**  
**FOR PRODUCING THE SAME**

Examiner: Yuan

S.N. 10/088,484

Art Unit: 1745

September 17, 2004

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 9, 2004 has been entered. Claims 1,2,4,8 were amended.

2. The text of those sections of Title 35, U.S.C. code not included in this action can be found in the prior Office Action issued on March 9, 2004.

***Specification***

3. The amendment filed July 9, 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "said amount of said hydrogen ion conductive polymer electrolyte varies seamless in a thickness direction of said anode or said cathode" in claim 1 and "a layer, which is not in contact with said hydrogen ion conductive polymer electrolyte membrane, consisting of a hydrogen ion conductive polymer" in claim 4.

Applicant is required to cancel the new matter in the reply to this Office Action.

**Claim Rejections - 35 USC § 112**

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1,2,4-11 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The recitations “said amount of said hydrogen ion conductive polymer electrolyte varies seamless in a thickness direction of said anode or said cathode” in claim 1 and “a layer, which is not in contact with said hydrogen ion conductive polymer electrolyte membrane, consisting of a hydrogen ion conductive polymer” in claim 4 do not have support in the instant specification. If applicant believes said terms are fully defined, it is requested that applicant indicates column and line, and/or figure with number to support the recitations.

***Claim Rejections - 35 USC § 102***

6. The claim rejections under 35 U.S.C. 102(b) as anticipated by Tomoyuki et al. on claims 1-2,8-11 are withdrawn, because the independent claim 1 has been amended.

***Claim Rejections - 35 USC § 103***

7. The claim rejections under 35 U.S.C. 103(a) as unpatentable over Tomoyuki et al. (JP 09-245802) as applied to claims 1-2,8-11 and further in view of Tomoyuki et al. on claims 4-7 are withdrawn, because the independent claim 1 has been amended.

***Response to Arguments***

8. Applicant's arguments filed on July 9, 2004 have been fully considered but they are not persuasive.

*Applicant's principle arguments are*

*Claim 1 has been amended to recite that the amount of hydrogen ion conductive polymer electrolyte varies seamlessly in a thickness direction of the anode or the cathode, which is not disclosed in Tomoyuki.*

In response to Applicant's arguments, please consider the following comments.

The instant disclosure teaches the catalytic layer having hydrogen ion conductive polymer electrolyte that varies seamlessly in the thickness direction. See page 18. Example 4 further discloses the assembly of a membrane electrode assembly by using such electrode. However, the specification fails to disclose that only either the anode or the cathode has the aforementioned catalytic layer.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dah-Wei D. Yuan whose telephone number is (571) 272-1295. The examiner can normally be reached on Monday-Friday (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dah-Wei D. Yuan  
September 17, 2004

A handwritten signature in black ink, appearing to read 'D. Yuan', with a long horizontal flourish extending to the right.